



Norfolk Island Legislation Amendment (Criminal and Civil Matters) Ordinance 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Ordinance.

Dated 08 July 2021

David Hurley
Governor-General

By His Excellency's Command

Nola Marino
Assistant Minister for Regional Development and Territories
Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure,
Transport and Regional Development

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules	1
Schedule 1—Main amendments		2
Part 1—Amendment of the Bail Act 2005 (Norfolk Island)		2
<i>Norfolk Island Continued Laws Ordinance 2015</i>		2
Part 2—Amendment of the Court of Petty Sessions Act 1960 (Norfolk Island)		5
<i>Norfolk Island Continued Laws Ordinance 2015</i>		5
Part 3—Amendment of the Criminal Code 2007 (Norfolk Island)		6
<i>Norfolk Island Continued Laws Ordinance 2015</i>		6
Part 4—Amendment of the Criminal Procedure Act 2007 (Norfolk Island)		8
<i>Norfolk Island Continued Laws Ordinance 2015</i>		8
Part 5—Amendment of the Dangerous Drugs Act 1927 (Norfolk Island)		10
<i>Norfolk Island Continued Laws Ordinance 2015</i>		10
Part 6—Amendment of the Interpretation Act 1979 (Norfolk Island)		11
<i>Norfolk Island Continued Laws Ordinance 2015</i>		11
Part 7—Amendment of the Sentencing Act 2007 (Norfolk Island)		12
<i>Norfolk Island Continued Laws Ordinance 2015</i>		12
Part 8—Amendment of the Supreme Court Act 1960 (Norfolk Island)		18
<i>Norfolk Island Continued Laws Ordinance 2015</i>		18
Part 9—Amendment of the Traffic Act 2010 (Norfolk Island)		19
<i>Norfolk Island Continued Laws Ordinance 2015</i>		19
Part 10—Application, saving and transitional provisions		20
<i>Norfolk Island Continued Laws Ordinance 2015</i>		20
Schedule 2—Repeal of the Criminal Law Act 1960 (Norfolk Island) and other amendments		23
<i>Norfolk Island Applied Laws Ordinance 2016</i>		23
<i>Norfolk Island Continued Laws Ordinance 2015</i>		23

1 Name

This Ordinance is the *Norfolk Island Legislation Amendment (Criminal and Civil Matters) Ordinance 2021*.

2 Commencement

- (1) Each provision of this Ordinance specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Ordinance	The day after this Ordinance is registered.	10 July 2021

Note: This table relates only to the provisions of this Ordinance as originally made. It will not be amended to deal with any later amendments of this Ordinance.

- (2) Any information in column 3 of the table is not part of this Ordinance. Information may be inserted in this column, or information in it may be edited, in any published version of this Ordinance.

3 Authority

This Ordinance is made under section 19A of the *Norfolk Island Act 1979*.

4 Schedules

Each instrument that is specified in a Schedule to this Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Ordinance has effect according to its terms.

Schedule 1—Main amendments

Part 1—Amendment of the Bail Act 2005 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

1 After item 22AA of Schedule 1

Insert:

22AAAAA Subsection 3(1)

Insert:

firearm has the same meaning as in the *Firearms and Prohibited Weapons Act 1997*.

military-style weapon has the same meaning as in the *Weapons Prohibition Act 1998 (NSW)* as in force at the commencement of the *Norfolk Island Legislation Amendment (Criminal and Civil Matters) Ordinance 2021*.

pistol has the same meaning as in the *Firearms and Prohibited Weapons Act 1997*.

scheduled firearm has the same meaning as in the *Firearms and Prohibited Weapons Act 1997*.

sexual intercourse has same meaning as in Part 3.6 of the *Criminal Code 2007*.

2 After item 22AAAA of Schedule 1

Insert:

22AAAAB Paragraphs 8(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the offence of murder;
- (b) an offence that is punishable by imprisonment for life;
- (c) an offence punishable by imprisonment for 5 years or more that involves:
 - (i) sexual intercourse with a person aged under 16 years by a person who is aged 18 years or older; or
 - (ii) the infliction of actual bodily harm with intent to have sexual intercourse with a person aged under 16 years by a person who is aged 18 years or older;
- (d) an offence against Chapter 3 of the *Criminal Code 2007* that is punishable by imprisonment for 14 years or more;
- (e) an offence against a law of the Commonwealth, a State or a Territory that is similar to an offence referred to in paragraph (d);
- (f) an offence involving wounding or the infliction of grievous bodily harm if the accused person has previously been convicted of:
 - (i) an offence referred to in paragraph (d); or
 - (ii) an offence against a law of the Commonwealth, a State or a Territory that is similar to an offence referred to in paragraph (d);
- (g) an offence against Chapter 3 of the *Criminal Code 2007* that is punishable by imprisonment for 5 years or more and that involves the use of a firearm;

- (h) an indictable offence that involves the unlawful possession of a pistol or scheduled firearm in a public place;
- (i) an offence against Chapter 3 of the *Criminal Code 2007* that is punishable by imprisonment for 5 years or more and that involves the use of a military-style weapon;
- (j) an indictable offence that involves the unlawful possession of a military-style weapon;
- (k) an offence against the *Criminal Code 2007* that involves the cultivation, supply, possession, manufacture or production of a commercial quantity of a controlled drug or controlled plant (all within the meaning of Chapter 6 of that Code);
- (l) an offence against the *Dangerous Drugs Act 1927* punishable by imprisonment for 5 years or more;
- (m) an offence against Part 9.1 of the *Criminal Code* of the Commonwealth that involves the possession, trafficking, cultivation, sale, manufacture, importation, exportation or supply of a commercial quantity of a serious drug (all within the meaning of that Part);
- (n) an offence punishable by imprisonment for 5 years or more that is committed by the accused person:
 - (i) while on bail (whether granted under this Act or a law of the Commonwealth, a State or a Territory); or
 - (ii) while on parole (whether granted under a law of Norfolk Island, the Commonwealth, a State or a Territory);
- (o) an offence punishable by imprisonment for 5 years or more that is committed by the accused person while the person is the subject of a warrant that authorises the person's arrest and that is issued under:
 - (i) this Act; or
 - (ii) the *Court of Petty Sessions Act 1960*; or
 - (iii) the *Criminal Procedure Act 2007*; or
 - (iv) the *Sentencing Act 2007*; or
 - (v) the *Supreme Court Act 1960*.

22AAAAC Subsection 8(2)

Omit "satisfies", substitute "shows cause to".

22AAAAD After subsection 8(2)

Insert:

- (2A) If a person shows cause to a court as described in subsection (2) and the court makes an order granting bail to the person, the court must include in the order a statement of reasons for granting bail.

3 After item 22B of Schedule 1

Insert:

22BAA Section 35

Omit "shall not review a decision in relation to bail except a decision made by himself or an authorised person", substitute "must not review a decision in relation to bail except a decision made by the Chief Magistrate or an authorised member".

Schedule 1 Main amendments

Part 1 Amendment of the Bail Act 2005 (Norfolk Island)

22BAB Subsection 37(4)

After “revoked, a”, insert “Judge or”.

22BAC Subsection 37(5)

After “imposed, a”, insert “Judge or”.

Part 2—Amendment of the Court of Petty Sessions Act 1960 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

4 After item 43AW of Schedule 1

Insert:

43AX Sections 107, 116, 117 and 140

Omit “\$10,000” (wherever occurring), substitute “\$60,000”.

43AY Subsection 221(1)

Omit “(1)”.

43AZ Subsection 221(2)

Repeal the subsection.

Part 3—Amendment of the Criminal Code 2007 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

5 After item 53CC of Schedule 1

Insert:

53CCA Section 85

Repeal the section.

6 Item 53DAAC of Schedule 1 (paragraph 113A(3)(b))

Repeal the paragraph, substitute:

- (b) when the marriage was solemnised:
 - (i) the marriage was genuine; and
 - (ii) the other person was at least 16 years of age.

7 Item 53DAC of Schedule 1 (paragraph 119A(3)(b))

Repeal the paragraph, substitute:

- (b) when the marriage was solemnised:
 - (i) the marriage was genuine; and
 - (ii) the other person was at least 16 years of age.

8 After item 53G of Schedule 1

Insert:

53H Section 281 (definition of *controlled drug*)

Repeal the definition, substitute:

controlled drug means a *prohibited drug* within the meaning of the NSW Drug Misuse and Trafficking Act.

53J Section 281 (definition of *controlled plant*)

Repeal the definition, substitute:

controlled plant means a *prohibited plant* within the meaning of the NSW Drug Misuse and Trafficking Act.

53K Section 281

Insert:

NSW Drug Misuse and Trafficking Act means the *Drug Misuse and Trafficking Act 1985* (NSW) as in force at the commencement of the *Norfolk Island Legislation Amendment (Criminal and Civil Matters) Ordinance 2021*.

53L Subsection 282(1)

Repeal the subsection, substitute:

- (1) In this chapter:

commercial quantity of a controlled drug, or controlled plant, means the quantity specified for that drug or plant in column 4 of the table in Schedule 1 to the NSW Drug Misuse and Trafficking Act.

large commercial quantity of a controlled drug, or controlled plant, means the quantity specified for that drug or plant in column 5 of the table in Schedule 1 to the NSW Drug Misuse and Trafficking Act.

trafficable quantity of a controlled drug, or controlled plant, means the quantity specified for that drug or plant in column 1 of the table in Schedule 1 to the NSW Drug Misuse and Trafficking Act.

9 After item 54A of Schedule 1

Insert:

54AA Paragraph 353(2)(c)

Omit “\$10 000”, substitute “\$60,000”.

10 After item 56B of Schedule 1

Insert:

56BA Dictionary (definition of *law of Norfolk Island*)

Repeal the definition, substitute:

law of Norfolk Island means a law in force in Norfolk Island in accordance with section 15 of the *Norfolk Island Act 1979* of the Commonwealth.

Part 4—Amendment of the Criminal Procedure Act 2007 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

11 After item 57AG of Schedule 1

Insert:

57AH Section 41

Before “not including”, insert “including bail proceedings but”.

57AI Paragraph 43(8)(c)

Omit “person”, substitute “accused”.

57AJ At the end of subsection 43(8)

Add:

; (d) that the accused be assessed by a medical practitioner or a psychiatrist.

12 Item 59F of Schedule 1 (section 167F)

Repeal the section, substitute:

167F Sexual offence proceedings—publication identifying complainants

- (1) A person commits an offence if:
- (a) the person publishes any matter; and
 - (b) the person does not have the leave of the court to publish the matter; and
 - (c) the matter identifies, or is likely to lead to the identification of, another person (the *identified person*) as a complainant in a sexual offence proceeding.

Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

- (2) Subsection (1) does not apply if:
- (a) the publication is in an official publication in the course of, and for the purpose of, the proceeding; or
 - (b) the publication is in a document prepared for use in particular legal proceedings (whether or not the legal proceedings are a sexual offence proceeding); or
 - (c) the identified person is aged 14 years or older and the publication is made with the consent of the identified person; or
 - (d) the publication happens after the death of the identified person.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see section 58 of the *Criminal Code 2007*.

- (3) The court may give leave to a person to publish the matter.
- (4) In deciding whether to give leave, the court is to have regard to:
- (a) any trauma to the identified person that the publication could cause; and
 - (b) any damage to the reputation of the identified person that the publication could cause; and

- (c) any view of the identified person about the publication; and
 - (d) whether the publication is:
 - (i) for the purpose of supplying transcripts of the proceedings to persons with a genuine interest in the proceedings; or
 - (ii) for genuine research purposes; and
 - (e) whether the publication is in the public interest.
- (5) Leave may be given after the proceedings have finished. For this purpose, the court need not be constituted by the same judicial officers who constituted the court in the proceedings.
- (6) An application for leave under this section must be in writing.
- (7) A person who makes an application for leave under this section must take reasonable steps to give written notice of the application to each of the following:
 - (a) the identified person;
 - (b) the prosecutor in the proceeding;
 - (c) each defendant in the proceeding;
 - (d) each other complainant in the proceeding.
- (8) If the identified person or a party referred to in paragraph (7)(d) is a child at the time the application is made, the notice must be given to a parent, guardian or legal representative of the identified person or the party, as the case may be.
- (9) A notice under subsection (7) must:
 - (a) be given no later than 3 business days before the day the application is to be heard; and
 - (b) be accompanied by a copy of the application.
- (10) An application for leave under this section must not be determined unless the court:
 - (a) is satisfied the applicant has taken reasonable steps to give notice of the application in accordance with subsections (7), (8) and (9); and
 - (b) has considered such submissions and other evidence as it thinks necessary for determining the application.

Part 5—Amendment of the Dangerous Drugs Act 1927 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

13 Before item 62A of Schedule 1

Insert:

61A Subsection 3(1) (definition of *authorised officer*)

Repeal the definition, substitute:

authorised officer means:

- (a) an officer authorised by the Commonwealth Minister to seize goods liable to forfeiture; or
- (b) a person who is a member of the police force for the purposes of the *Police Act 1931*.

61B Subsection 3(1) (definition of *cannabis plant*)

Repeal the definition, substitute:

cannabis plant means any plant of the genus *Cannabis*.

14 After item 62A of Schedule 1

Insert:

62B Part 1 of Schedule 5 (after table item dealing with Methadone intermediate (4-Cyano-2-dimethylamino-4, 4-diphenylbutane))

Insert:

Methylamphetamine

3.00

62C Schedule 6

Omit “an officer authorised by the Administrator”, substitute “[an officer authorised by the Commonwealth Minister / a member of the police force permitted]”.

Part 6—Amendment of the Interpretation Act 1979 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

15 After item 186 of Schedule 1

Insert:

186A Section 40

Repeal the section, substitute:

40 Penalties

- (1) Except so far as the contrary intention appears, a penalty, whether pecuniary or otherwise, set out at the foot of any provision of an enactment as described in a paragraph of subsection (2) indicates:
 - (a) if the provision expressly creates an offence—that the offence is punishable on conviction by a penalty not exceeding the penalty so set out; or
 - (b) in any other case—that contravention of the provision is an offence against the provision, punishable on conviction by a penalty not exceeding the penalty so set out.
- (2) Subsection (1) applies to a penalty set out:
 - (a) at the foot of a section of an enactment; or
 - (b) at the foot of a subsection of an enactment, but not at the foot of the section containing the subsection; or
 - (c) at the foot of a clause of any Schedule to an enactment; or
 - (d) at the foot of a subclause of any Schedule to an enactment, but not at the foot of the clause containing the subclause.
- (3) Subsection (1) does not affect the operation of section 16 or 16A of the *Sentencing Act 2007*.

Part 7—Amendment of the Sentencing Act 2007 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

16 After item 297AB of Schedule 1

Insert:

297ABA Paragraph 5(2)(p)

Omit “or any other Act”, substitute “Act or any other law in force in Norfolk Island”.

17 After item 297AC of Schedule 1

Insert:

297AD Paragraph 7(l), subsection 8(2) and paragraph 8(3)(a)

Omit “or any other Act”, substitute “Act or any other law in force in Norfolk Island”.

297AE Section 16

Repeal the section, substitute:

16 Additional power to fine

Offences punishable by imprisonment

(1) If:

- (a) an offence against a law in force in Norfolk Island is punishable by a term of imprisonment; and
- (b) the offence is not, apart from this subsection, punishable by a fine; and
- (c) the offender is a natural person;

a court may, in addition to or instead of sentencing the offender to a term of imprisonment, impose a fine not exceeding the product obtained by multiplying 50 penalty units by:

- (d) if the term of imprisonment is one year or more—that term expressed in years; or
- (e) otherwise—that term expressed as a fraction of a year.

Offences not punishable by imprisonment

(2) If:

- (a) an offence against a law in force in Norfolk Island is not punishable by a term of imprisonment; and
- (b) the offence is not, apart from this subsection, punishable by a fine; and
- (c) the offender is a natural person;

a court may impose a fine not exceeding:

- (d) 100 penalty units if the court is the Supreme Court; or
- (e) 50 penalty units if the court is the Court of Petty Sessions.

16A Corporate multiplier for fines

If a body corporate is convicted of an offence against a law in force in Norfolk Island, a court may, if the contrary intention does not appear and the court thinks fit, impose a fine not exceeding an amount equal to 5 times the amount of the maximum fine that could be imposed by the court on a natural person convicted of the same offence.

297AF Section 20

Omit “an Act”, substitute “a law in force in Norfolk Island”.

297AG Subsection 21(1)

Omit “under section 16(1)”.

297AGA Subsection 39(5)

Omit “enactments except an enactment”, substitute “laws in force in Norfolk Island except a law”.

297AGB Subsection 39(7)

Omit “enactment”, substitute “law in force in Norfolk Island”.

18 After item 297A of Schedule 1

Insert:

297B Subsection 90(1)

Omit “subsection (2)”, substitute “this Act”.

297C Subsection 91(1)

Repeal the subsection, substitute:

- (1) Subject to this section, where a court (the *sentencing court*) is sentencing an offender to be imprisoned for life for the crime of murder, the court must fix a period during which the offender is not eligible to be released on parole of:
 - (a) 20 years; or
 - (b) if any of the circumstances in subsection (3) apply—25 years.

(1A) This section does not apply if section 93 applies.

Note: Section 93 applies to further sentences imposed on certain offenders already serving terms of imprisonment.

297D After subsection 91(9)

Insert:

- (9A) If the offender is being sentenced to be imprisoned for more than one offence, the sentencing court must fix one non-parole period in relation to all of the sentences.

297E After section 91

Insert:

92 Non-parole periods for other offences

- (1) This section applies if a court (the **sentencing court**) is sentencing an offender to be imprisoned for life, or for a term of at least 12 months, for an offence, unless:
- (a) the sentence is to be suspended in whole or in part; or
 - (b) the court is sentencing the offender to be imprisoned for life for the crime of murder; or
 - (c) section 93 applies.

Note 1: See section 91 in relation to non-parole periods for offenders sentenced to be imprisoned for life for the crime of murder.

Note 2: Section 93 applies to further sentences imposed on certain offenders already serving terms of imprisonment.

- (2) The sentencing court must fix a period during which the offender is not eligible to be released on parole unless the court considers that any of the following make it inappropriate to fix such a period:
- (a) the nature of the offence;
 - (b) the history of the offender;
 - (c) the circumstances of the case;
 - (d) any other reason.
- (3) If the sentencing court refuses to fix a non-parole period, the court must:
- (a) state its reasons for so refusing; and
 - (b) cause the reasons to be entered in the records of the court.
- (4) If the offender is being sentenced to be imprisoned for more than one offence, the sentencing court must fix one non-parole period in relation to all of the sentences.
- (5) The failure of the sentencing court to comply with this section does not invalidate the sentence imposed on the offender.

93 Offenders already imprisoned when sentenced

Application of this section

- (1) This section applies if:
- (a) an offender is serving a term of imprisonment imposed under this Act for an offence; and
 - (b) either:
 - (i) the offender is serving a non-parole period (the **existing non-parole period**) fixed in relation to the sentence for the offence; or
 - (ii) a court refused to fix a non-parole period in relation to the sentence for the offence; and
 - (c) a court (the **sentencing court**) is sentencing the offender to be imprisoned for life, or for a term of at least 12 months, for another offence (the **further sentence**); and
 - (d) the further sentence is not to be suspended in whole or in part.

Powers where offender is already serving a non-parole period

- (2) If the offender is serving a non-parole period, the sentencing court must, after considering the relevant circumstances, including:

- (a) the existing non-parole period; and
 - (b) the nature and circumstances of the offences mentioned in paragraphs (1)(a) and (c); and
 - (c) the offender's history;
- do one of the following things:
- (d) make an order confirming the existing non-parole period;
 - (e) fix a new period during which the offender is not eligible to be released on parole in relation to all of the sentences under this Act the offender is to serve;
 - (f) if the court decides that a non-parole period is not appropriate—cancel the existing non-parole period and refuse to fix a new non-parole period.
- (3) If, under paragraph (2)(e), the sentencing court fixes a new non-parole period, it is to be treated as having superseded the existing non-parole period.

Powers where offender is not already serving a non-parole period

- (4) If the offender is not serving a non-parole period, the sentencing court must, after considering the relevant circumstances, including:
- (a) the nature and circumstances of the offences mentioned in paragraphs (1)(a) and (c); and
 - (b) the offender's history;
- do one of the following things:
- (c) fix a period during which the offender is not eligible to be released on parole in relation to all of the sentences under this Act the offender is to serve;
 - (d) if the court decides that a non-parole period is not appropriate—refuse to fix a non-parole period.

Requirements applying whether or not offender is already serving a non-parole period

- (5) A non-parole period confirmed or fixed under subsection (2) or (4) must not be such as to allow the offender to be released on parole:
- (a) earlier than the offender could have been released (on parole or otherwise) if the further sentence were not imposed; or
 - (b) if the sentencing court is sentencing the offender to imprisonment for life for the crime of murder—earlier than would have been the case if the non-parole period were being fixed under section 91.
- (6) If the sentencing court refuses to fix a non-parole period under subsection (2) or (4), the court must:
- (a) state its reasons for so doing; and
 - (b) cause the reasons to be entered in the records of the court.
- (7) The failure of the sentencing court to comply with this section does not invalidate the sentence imposed on the offender.

94 Fixing of non-parole period for sentences imposed before commencement

- (1) This section applies if:

- (a) before the commencement of this section, a court sentenced an offender under this Act to be imprisoned for life, or for a term of at least 12 months, for an offence; and
 - (b) the offender has not been sentenced to imprisonment for life for the crime of murder; and
 - (c) the sentence is not suspended in whole or in part; and
 - (d) the offender is serving the sentence; and
 - (e) a court has not fixed a non-parole period in relation to the sentence.
- (2) On application by the offender or a prosecutor, a court must fix a period during which the offender is not eligible to be released on parole unless the court considers that any of the following make it inappropriate to fix such a period:
- (a) the nature of the offence;
 - (b) the history of the offender;
 - (c) the circumstances of the case;
 - (d) any other reason.
- (3) If the court refuses to fix a non-parole period, the court must:
- (a) state its reasons for so refusing; and
 - (b) cause the reasons to be entered in the records of the court.

297F Subsections 101(1), 118(2) and 119(2)

Omit “or any other Act”, substitute “Act or a law in force in Norfolk Island”.

297G Subsection 147(1) (definition of *Parole Board*)

Omit “another Act”, substitute “another law in force in Norfolk Island”.

297GA Subsection 147(1) (definition of *prison sentence*)

Omit “or any other Act”, substitute “Act or any other law in force in Norfolk Island”.

297GB Subsection 147(1) (paragraph (a) of the definition of *prison sentence*)

Omit “non-parole period has not been fixed”, substitute “non-parole period is not fixed”.

297GC Subsection 147(1) (paragraphs (b) and (c) of the definition of *prison sentence*)

Omit “non-parole period has been fixed”, substitute “non-parole period is fixed”.

297GD Paragraph 147(2)(a)

Omit “enactment of”, substitute “law in force in”.

297GE Subsection 151(1)

Omit “non-parole period was fixed”, substitute “non-parole period is fixed”.

297GF Paragraph 166(2)(a)

Omit “under section 16”, substitute “but not a sentence of imprisonment”.

297GG Section 167

Repeal the section.

297GH Section 168

Omit “or any other Act”, substitute “Act or any other law in force in Norfolk Island”.

297GI Subsections 169(1) and (2)

Omit “an Act, including this Act, or an instrument of a legislative or administrative character”, substitute “a law in force in Norfolk Island”.

297GJ Subsection 170(1)

Omit “an Act”, substitute “a law in force in Norfolk Island”.

297GK Subsection 170(1)

Omit “of imprisonment of more than 2 years or a fine greater than 1 000 penalty units”, substitute:

of:

- (a) imprisonment of more than 2 years, or a fine greater than 1,000 penalty units, if the person is a natural person; or
- (b) a fine greater than 5,000 penalty units if the person is a body corporate.

297GL Subsection 170(2)

Omit “enactment”, substitute “law in force in Norfolk Island”.

297GM Paragraph 171(2)(a)

Omit “an Act or an instrument of a legislative or administrative character”, substitute “a law in force in Norfolk Island”.

297GN Paragraph 171(2)(b)

Omit “an Act or a provision of an Act that has been repealed or an instrument of a legislative or administrative character or a provision of such an instrument”, substitute “a law that was in force in Norfolk Island, or a provision of such a law,”.

297GO Subsection 171(3)

Omit “Act or the instrument of a legislative or administrative character”, substitute “law in force in Norfolk Island”.

Part 8—Amendment of the Supreme Court Act 1960 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

19 Item 336D of Schedule 1 (subsection 23(7) (note))

Repeal the note.

20 After item 336D of Schedule 1

Insert:

336DA After section 33

Insert:

33A Appeals against sentence by Commonwealth Attorney-General or Director of Public Prosecutions

The Attorney-General of the Commonwealth or the Director of Public Prosecutions of the Commonwealth may, with the leave of the Full Court of the Federal Court of Australia, appeal to that Court against the sentence passed in relation to a person's conviction on indictment before the Supreme Court.

336DB Section 34

Omit "32 or 33", substitute "32, 33 or 33A".

Part 9—Amendment of the Traffic Act 2010 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

21 After item 341DAAD of Schedule 1

Insert:

341DAADA Paragraph 40A(1)(a)

Omit “5 years”, substitute “8 years”.

341DAADB Paragraph 40A(1)(b)

Repeal the paragraph, substitute:

- (b) at least 8 years old to travel in or on the open tray unless all of the following apply:
 - (i) the person is seated, between 6 am and 8 pm, on the open tray;
 - (ii) the sides of that tray are closed and extend at least 150 millimetres above the floor of the tray;
 - (iii) the driver holds a drivers licence that is endorsed by the Registrar under subsection 23B(1);
 - (iv) the driver produces written evidence of that endorsement if required to do so by a member of the police force.

Part 10—Application, saving and transitional provisions

Norfolk Island Continued Laws Ordinance 2015

22 In the appropriate position in Part 2 of Schedule 1

Insert:

Division 22—Application, saving and transitional provisions relating to the Norfolk Island Legislation Amendment (Criminal and Civil Matters) Ordinance 2021

415 Application provisions affecting the *Bail Act 2005* (Norfolk Island)

- (1) Section 8 of the *Bail Act 2005* (Norfolk Island), as amended by this Schedule, applies in relation to the first occurring reference of an offence in a paragraph of subsection (1) of that section alleged to have been committed on or after the commencement of this item.
- (2) Section 37 of the *Bail Act 2005* (Norfolk Island), as amended by this Schedule, applies in relation to the review, under Division 2 of Part 6 of that Act, of a bail decision made before, on or after the commencement of this item.

416 Application provision affecting the *Court of Petty Sessions Act 1960* (Norfolk Island)

Sections 107, 116, 117 and 140 of the *Court of Petty Sessions Act 1960* (Norfolk Island), as amended by this Schedule, apply in relation to a civil claim in respect of a sum, or matter, made before, on or after the commencement of this item.

417 Saving provision affecting the *Criminal Code 2007* (Norfolk Island)

Despite the repeal and substitution of paragraphs 113A(3)(b) and 119A(3)(b) of the *Criminal Code 2007* (Norfolk Island) by this Schedule at the commencement of this item, subsections 113A(3) and 119A(3) of the *Criminal Code 2007* (Norfolk Island), as in force immediately before that commencement, continue to apply in relation to offences alleged to have been committed before that commencement.

418 Application provisions affecting the *Criminal Code 2007* (Norfolk Island)

- (1) The amendments of sections 281 and 282, and the definition of *law of Norfolk Island* in the Dictionary, of the *Criminal Code 2007* (Norfolk Island) made by this Schedule apply in relation to acts or omissions on or after the commencement of this item.
- (2) The amendment of paragraph 353(2)(c) of the *Criminal Code 2007* (Norfolk Island) made by this Schedule applies in relation to acts or omissions on or after the commencement of this item.

419 Application provisions affecting the *Dangerous Drugs Act 1927* (Norfolk Island)

- (1) An authorisation for the purposes of the definition of *authorised officer* in subsection 3(1) of the *Dangerous Drugs Act 1927* (Norfolk Island) that was in force immediately before the commencement of this item has effect, after the

commencement of this item, as if it had been made under paragraph (a) of that definition as amended by this Schedule.

- (2) The amendment of the definition of *cannabis plant* in subsection 3(1) of the *Dangerous Drugs Act 1927* (Norfolk Island) made by this Schedule applies in relation to acts or omissions on or after the commencement of this item.
- (3) The amendment of Part 1 of Schedule 5 to the *Dangerous Drugs Act 1927* (Norfolk Island) made by this Schedule applies in relation to acts or omissions on or after the commencement of this item.

420 Application provision affecting the *Interpretation Act 1979* (Norfolk Island)

The repeal and substitution of section 40 of the *Interpretation Act 1979* (Norfolk Island) made by this Schedule applies in relation to a penalty imposed on or after the commencement of this item in relation to an offence that is committed before, on or after the commencement of this item.

421 Application provisions affecting the *Sentencing Act 2007* (Norfolk Island)

- (1) The amendment of paragraph 5(2)(p) of the *Sentencing Act 2007* (Norfolk Island) made by this Schedule applies in relation to the revocation of an order before, on or after the commencement of this item.
- (2) The amendments of subsection 8(2) and paragraph 8(3)(a) of the *Sentencing Act 2007* (Norfolk Island) made by this Schedule apply in relation to a finding of guilt before, on or after the commencement of this item.
- (3) The amendments of paragraph 7(1), of subsections 21(1), 101(1), 118(2) and 119(2) and of sections 91 and 168, the repeal and substitution of section 16, and the insertion of sections 16A and 92 of the *Sentencing Act 2007* (Norfolk Island) made by this Schedule apply in relation to a sentence imposed on or after the commencement of this item in relation to an offence that is committed before, on or after the commencement of this item.
- (4) The amendments of subsections 39(5) and (7) of the *Sentencing Act 2007* (Norfolk Island) made by this Schedule apply in relation to a sentence suspended before, on or after the commencement of this item.
- (5) The amendments of subsections 90(1), 147(1) and 151(1) of the *Sentencing Act 2007* (Norfolk Island) made by this Schedule apply in relation to a sentence imposed before, on or after the commencement of this item.
- (6) The insertion of section 93 of the *Sentencing Act 2007* (Norfolk Island) made by this Schedule applies in relation to a sentence imposed on an offender on or after the commencement of this item, whether the offender is serving a term of imprisonment imposed, or existing non-parole period fixed, before, on or after the commencement of this item.
- (7) The amendment of paragraph 147(2)(a) of the *Sentencing Act 2007* (Norfolk Island) made by this Schedule applies in relation to a parole order made on or after the commencement of this item in relation to a sentence imposed before, on or after the commencement of this item.

- (8) The amendment of paragraph 166(2)(a) of the *Sentencing Act 2007* (Norfolk Island) made by this Schedule applies in relation to an order made on or after the commencement of this item.
- (9) The amendments of subsections 169(1) and (2) of the *Sentencing Act 2007* (Norfolk Island) made by this Schedule apply in relation to an increase or decrease that occurs on or after the commencement of this item.
- (10) The amendments of section 20 and subsection 170(1) of the *Sentencing Act 2007* (Norfolk Island) made by this Schedule apply in relation to a fine imposed on or after the commencement of this item in relation to an offence that is committed before, on or after the commencement of this item.
- (11) The amendments of section 171 of the *Sentencing Act 2007* (Norfolk Island) made by this Schedule apply in relation to a finding of guilt or conviction before, on or after the commencement of this item.

422 Application provision affecting the *Supreme Court Act 1960* (Norfolk Island)

Section 33A of the *Supreme Court Act 1960* (Norfolk Island), as inserted by this Schedule, applies in relation to a sentence passed on or after the commencement of this item.

423 Application provision affecting the *Traffic Act 2010* (Norfolk Island)

The amendments of section 40A of the *Traffic Act 2010* (Norfolk Island) made by this Schedule apply in relation to acts or omissions on or after the commencement of this item.

Schedule 2—Repeal of the Criminal Law Act 1960 (Norfolk Island) and other amendments

Norfolk Island Applied Laws Ordinance 2016

1 Schedule 1AAA (heading)

Omit “2014”, substitute “2019”.

2 Schedule 1AAA (heading specifying Crimes (Domestic and Personal Violence) Regulation 2014 (NSW))

Omit “2014”, substitute “2019”.

Norfolk Island Continued Laws Ordinance 2015

3 Before item 53 of Schedule 1 (after the heading)

Insert:

52A Section 2

Repeal the section.

4 After item 56C of Schedule 1

Insert:

56D The Schedule

Repeal the Schedule.

5 Before item 57 of Schedule 1 (after the heading)

Insert:

56E Section 3

Repeal the section.

6 After item 60 of Schedule 1

Insert:

60A The Schedule

Repeal the Schedule.

7 Item 1 of Schedule 2

Insert:

Criminal Law Act 1960